

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

SEP 17 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE GREGORY R.

) 2 CA-JV 2008-0047

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16351501

Honorable Terry L. Chandler, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By James M. Coughlin

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Eva K. Bacal

Tucson
Attorneys for Minor

E S P I N O S A, Judge.

¶1 Gregory R. was adjudicated delinquent after he admitted having committed assault. On appeal, the sole issue he raises is that the juvenile court erred when it ordered him to pay restitution to the victim's mother for dental expenses the minor victim had yet to incur. We affirm for the reasons stated below.

¶2 At the combined disposition and restitution hearing, orthodontist Andrew Rosen testified he was the victim's orthodontist and had examined the victim when he came in on an emergency basis; Rosen noted that the tooth in question had suffered a trauma. He anticipated, with eighty to ninety percent certainty, that the victim would require a root canal procedure within three to five years because the tooth was dying. Rosen had examined the tooth six times since the initial visit, and he estimated the cost of the procedure and the placement of a crown on the tooth would be \$2,500, based on the cost in the Tucson area. Gregory asked the court to reconsider its order. Following subsequent hearings, and over Gregory's objections, the juvenile court ordered him to pay this amount to the victim's mother for the victim's benefit, at the rate of \$150 per month.

¶3 Gregory contends on appeal, as he did below, that the restitution order is speculative because the root canal procedure and crown placement have yet to occur. He contends, too, that the juvenile court abused its discretion by rejecting his request to set up a special account for this amount, allowing the victim to withdraw it should the expense ultimately be incurred. Section 8-344, A.R.S., provides that the court must require a delinquent juvenile "to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent." A preponderance of the evidence is required to support a restitution order. *See In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003). The court "has discretion to set the restitution amount according to the facts of the case in order to make the victim whole." *In re Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d 543, 548 (App. 2002). Absent an abuse of discretion, which includes an error of law, we

will not disturb the court's order of restitution. *In re Erika V.*, 194 Ariz. 399, ¶ 2, 983 P.2d 768, 769 (App. 1999). To be lawful, a restitution order must bear "a reasonable relationship to the victim's [compensable] loss." *Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d at 548. On the record before us, the court did not abuse its discretion.

¶4 As Division One of this court held in *State v. Howard*, 168 Ariz. 458, 815 P.2d 5 (App. 1991), future medical expenses may be awarded as part of restitution. Restitution includes "not only those losses incurred at the time of sentencing, but also those losses reasonably anticipated to be incurred in the future as a result of the defendant's actions." *Id.* at 460, 815 P.2d at 7. *Howard* is not, as Gregory suggests, significantly distinguishable on the ground that the defendant in that case had failed to object in the trial court. *See id.* Additionally, there, as Gregory also points out, the court of appeals noted the trial court had left open the possibility of adjusting the amount of restitution in the event the expenses were less than projected or, with respect to the victim's lost earnings, the victim was able to return to work earlier than anticipated. *See id.* But the holding of that case is nevertheless applicable here. The amount awarded must bear a reasonable relation to the victim's losses and must be supported by sufficient evidence. *See Stephanie B.*, 204 Ariz. 466, ¶¶ 14-17, 65 P.3d at 117-18 (affirming restitution award for repairing damaged teeth because damage was related to the offense of adjudication).

¶5 Dr. Rosen was clearly qualified to provide evidence of the estimated cost of the procedures that would be necessary to repair the victim's tooth. Rosen's certainty that the tooth would die was not absolute, but he observed the tooth had progressively

deteriorated during six examinations between February 2007 and March 2008, and he believed the tooth was “necrosing or dying.” The award was not speculative.

¶6 Nor did the juvenile court abuse its discretion by refusing to set up an account and require the victim to incur and substantiate the expenses. As the state points out, § 8-344(A) requires restitution be paid through the clerk of the court “for disbursement to the victim or estate of the victim.” That the trial court in *Howard* had expressly reserved the right to adjust the amount if necessary does not mean the juvenile court was required to set up a separate account in this case or to reserve that same authority. Our decision does not foreclose the possibility of such a proceeding, should it somehow be presented below.

¶7 We conclude the court did not abuse its discretion in its order of restitution. Consequently, we affirm.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge